

AMENDED IN SENATE APRIL 29, 2004

SENATE BILL

No. 1614

Introduced by Senator Torlakson

February 20, 2004

~~An act to add Division 19 (commencing with Section 40000) to the Streets and Highways Code, relating to motor vehicle fuel. An act to amend Sections 7360, 7653, 60050, and 60201.1 of, and to repeal and add Sections 7361 and 60050.1 of, the Revenue and Taxation Code, relating to taxation, and making an appropriation therefor, to take effect immediately, tax levy.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 1614, as amended, Torlakson. ~~Gasoline and motor vehicle diesel fuel~~ *Motor vehicle fuel license taxes: diesel fuel taxes.*

The Motor Vehicle Fuel License Tax Law imposes a tax of 18¢ per gallon of fuel, and requires, if the federal fuel tax is reduced below the rate of 9¢ per gallon and federal financial allocations to this state are reduced or eliminated, that the tax rate be increased so that the combined state and federal tax rate per gallon equals 27¢. The Diesel Fuel Tax Law imposes an excise tax for the use of fuel at a rate of 18¢ per gallon, and requires that, if the federal fuel tax is reduced below the rate of 15¢ per gallon and specified federal financial allocations to this state are reduced or eliminated, the tax rate be increased by an amount so that the combined state and federal tax rate per gallon equals 33¢ per gallon.

This bill would, under both laws, increase the rate to 23¢ per gallon, but not until the retail price per gallon decreases to less than \$2 per gallon, as specified. This bill would also impose a storage tax equal to

the increase in tax on each gallon of tax paid motor vehicle and diesel fuel, in storage, as provided.

Existing law provides that a portion of the amounts collected under the Motor Vehicle Fuel License Tax Law and the Diesel Fuel Tax Law are continuously appropriated for expenditure for specified purposes.

Since this bill would permit an increase in the taxes collected under that law and thereby make additional moneys available for continuous expenditure, it would make an appropriation.

Section 3 of Article XIII A of the California Constitution requires that any change in state taxes enacted for the purpose of increasing revenues be imposed by a statute that is passed by not less than $\frac{2}{3}$ of the members of each house of the Legislature.

Since this bill would permit an increase in state fuel taxes, this bill would require a $\frac{2}{3}$ vote for passage.

This bill would take effect immediately as a tax levy.

~~This bill would also impose a 10¢ fee on each gallon of gasoline subject to the Motor Vehicle Fuel License Tax Law and each gallon of motor vehicle diesel fuel subject to the Diesel Fuel Tax Law and would require revenues from the fee to be deposited in the Highway Fee Fund created by the bill. The bill would require the fee to be imposed on those persons and entities subject to and would be collected pursuant to the procedures set forth in the Motor Vehicle Fuel License Tax Law and the Diesel Fuel Tax Law. The bill would require, except for refunds of overpayments, that, upon appropriation by the Legislature, revenues from 9¢ of the fee be used to finance the maintenance, operation, improvement, and construction of the state highway and local street and road system and that revenues from one cent of the fee be used to finance environmental programs that mitigate the air impacts of motor vehicles. The bill would require the California Transportation Commission to hold hearings annually in order to derive information to report to the Legislature on the amount of funding needed to maintain, operate, improve, and construct the state highway and local street and road system.~~

~~Vote: majority $\frac{2}{3}$. Appropriation: no yes. Fiscal committee: yes. State-mandated local program: no.~~

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:

(a) The excise tax on motor vehicle fuel was last increased on January 1, 1994, when the rate was set at eighteen cents (\$0.18) per gallon.

(b) The demand on California's state highways, streets, and local roads has increased at a far greater rate than the revenues available to operate, maintain, and improve the transportation network.

(c) Increased motor vehicle fuel economy results in the consumption of less fuel and the generation of less gas tax revenue per mile driven, while inflation also erodes this revenue.

(d) Because motor vehicles create wear and tear on the highway, street, and road system, users of the system should pay the reasonable costs of maintaining, operating, and improving the system.

~~(e) A fee on gasoline and diesel sales would help maintain, operate, improve, and construct the state highway, local street, and road system, and the amount of the levy would not exceed the reasonable cost of funding those purposes.~~

~~(f) Because emissions from motor vehicles add to air quality problems, a portion of the fee on gasoline and diesel sales should be used for environmental programs that mitigate the air quality impacts of motor vehicles.~~

~~SEC. 2. Division 19 (commencing with Section 40000) is added to the Streets and Highways Code, to read:~~

~~DIVISION 19. GASOLINE AND DIESEL MOTOR
VEHICLE FUEL~~

~~40000. Notwithstanding any other provision of law, a fee of 10 cents (\$0.10) shall be imposed on each gallon of gasoline subject to Part 2 (commencing with Section 7301) of Division 2 of the Revenue and Taxation Code and each gallon of motor vehicle diesel fuel subject to Part 31 (commencing with Section 60001) of Division 2 of the Revenue and Taxation Code.~~

~~40001. Revenues generated from the fee imposed in Section 40000 shall be deposited in the Highway Fee Fund which is hereby created in the State Treasury and, except for refunds of nonpayments, may only be allocated, upon appropriation by the Legislature, as follows:~~

~~(a) Nine cents (\$0.09) of the 10 cent (\$.0.10) fee revenue shall be allocated to finance the maintenance, operation, improvement, and construction of the state highway and local street and road system.~~

~~(b) One cent of the 10 cent (\$.0.10) fee revenue shall be allocated towards environmental programs that mitigate the air impacts of motor vehicles.~~

~~40002. The imposition of the fee in Section 40000 shall be as follows:~~

~~(a) The fee on gasoline shall be imposed on those persons and entities subject to, and shall be collected pursuant to the procedures set forth in, Part 2 (commencing with Section 7301) of Division 2 of the Revenue and Taxation Code.~~

~~(b) The fee on motor vehicle diesel fuel shall be imposed on those persons and entities subject to, and shall be collected pursuant to the procedures set forth in, Part 31 (commencing with Section 60001) of Division 2 of the Revenue and Taxation Code.~~

~~40003. The California Transportation Commission shall annually hold hearings in order to derive information to report to the Legislature on the amount of funding needed to maintain, operate, improve, and construct the state highway and local street and road system.~~

SEC. 2. Section 7360 of the Revenue and Taxation Code is amended to read:

7360. (a) (1) A tax of eighteen cents (\$0.18) is hereby imposed upon each gallon of *motor vehicle* fuel subject to the tax in Sections 7362, 7363, and 7364.

(2) *Subject to paragraph (3), the rate of tax under paragraph (1) shall be increased to twenty-three cents (\$0.23) per gallon.*

(3) *The increase in the rate of tax pursuant to paragraph (2), if any, shall not occur unless and until the retail price decreases to less than two dollars (\$2) per gallon, based on the retail price for a gallon of regular unleaded gasoline, as reported by the California Energy Commission.*

(b) If the federal fuel tax is reduced below the rate of nine cents (\$0.09) per gallon and federal financial allocations to this state for highway and exclusive public mass transit guideway purposes are reduced or eliminated correspondingly, the tax rate imposed by this section, on and after the date of the reduction, shall be recalculated by an amount so that the combined state and federal

1 tax rate per gallon equals ~~twenty-seven cents (\$0.27)~~ *nine cents*
2 *(\$0.09) plus the current rate of tax prior to recalculation.*

3 (c) If any person or entity is exempt or partially exempt from
4 the federal fuel tax at the time of a reduction, the person or entity
5 shall continue to be so exempt under this section.

6 *SEC. 3. Section 7361 of the Revenue and Taxation Code is*
7 *repealed.*

8 ~~7361. (a) For the privilege of storing, for the purpose of~~
9 ~~removal, sale, or use, every distributor owning motor vehicle fuel~~
10 ~~on January 1, 2002, shall pay a tax of eighteen cents (\$0.18) for~~
11 ~~each gallon of motor vehicle fuel according to the volumetric~~
12 ~~measure thereof, on which a tax has not been imposed under Part~~
13 ~~2 (commencing with Section 7301) as in effect on December 31,~~
14 ~~2001, and tax would have been imposed on any prior removal,~~
15 ~~entry, or sale of motor vehicle fuel had Sections 7360 to 7363,~~
16 ~~inclusive, applied to motor vehicle fuel for the period before~~
17 ~~January 1, 2002.~~

18 (b) For purposes of subdivision (a):

19 (1) ~~“Storing” includes the possession in a storage facility,~~
20 ~~except an approved terminal or refinery, of motor vehicle fuel as~~
21 ~~well as the motor vehicle fuel purchased from and invoiced by the~~
22 ~~seller prior to January 1, 2002, and in transit on that date.~~

23 (2) ~~“Owning” means having title to the motor vehicle fuel.~~

24 (3) ~~“Distributor” means any person who was required to be~~
25 ~~licensed as a distributor under Part 2 (commencing with Section~~
26 ~~7301) as in effect on December 31, 2001.~~

27 *SEC. 4. Section 7361 is added to the Revenue and Taxation*
28 *Code, to read:*

29 *7361. (a) For the privilege of storing for the purpose of sale,*
30 *each blender, wholesaler, and retailer owning 1,000 gallons or*
31 *more of tax paid motor vehicle fuel on January 1, 2004, or on*
32 *January 1 of any calendar year thereafter, as applicable, shall pay*
33 *a storage tax equal to the increase that occurred in the rate of tax*
34 *pursuant to paragraph (2) of subdivision (a) of Section 7360 on*
35 *each gallon of tax paid motor vehicle fuel in storage according to*
36 *the volumetric measure thereof.*

37 (b) For purposes of subdivision (a):

38 (1) *“Storing” includes the possession in a storage facility,*
39 *except an approved terminal or refinery, or a container of any kind,*
40 *including railroad tank cars and truck or trailer cargo tanks, of tax*

1 *paid motor vehicle fuel as well as the tax paid motor vehicle fuel*
2 *purchased from and invoiced by the seller prior to January 1 and*
3 *in transit on that date.*

4 (2) *“Owning” means having title to the motor vehicle fuel.*

5 (3) *“Wholesaler” means any person who sells motor vehicle*
6 *fuel in this state for resale to a retailer or to a person who is not*
7 *a retailer and subsequently uses the motor vehicle fuel.*

8 (4) *“Retailer” means any person who sells motor vehicle fuel*
9 *in this state to a person who subsequently uses the motor vehicle*
10 *fuel.*

11 *SEC. 5. Section 7653 of the Revenue and Taxation Code is*
12 *amended to read:*

13 7653. ~~(a) Each~~ *On or before January 31, each person subject*
14 *to the storage tax imposed under Section 7361, on or before*
15 ~~February 28, 2002,~~ *shall prepare and file with the board, on forms*
16 *prescribed by the board, a return showing the total number of*
17 *gallons of tax paid motor vehicle fuel owned by the person on*
18 *January 1, 2002, for which a tax has not been imposed under Part*
19 ~~2 (commencing with Section 7301) as in effect on December 31,~~
20 ~~2001~~ *the immediately preceding January 1, the amount of the*
21 ~~storage tax imposed,~~ *and any other information that the board*
22 *deems necessary for the proper administration of this part. The*
23 *return shall be accompanied by a remittance payable to the*
24 *Controller in the amount of tax due.*

25 ~~(b) Any distributor, as defined in paragraph (3) of subdivision~~
26 ~~(b) of Section 7361, who has tax paid motor vehicle fuel in the~~
27 ~~bulk transfer/terminal system on January 1, 2002, which was~~
28 ~~purchased prior to January 1, 2002, shall report the tax paid~~
29 ~~gallons on the subdivision (a) return. The amount of taxes paid on~~
30 ~~the tax paid gallons shall constitute a credit against the amount of~~
31 ~~taxes due and payable on the subdivision (a) return, or on the~~
32 ~~supplier's January 2002 return required under Section 7651, and~~
33 ~~for each succeeding return until the credit is fully utilized.~~

34 *SEC. 6. Section 60050 of the Revenue and Taxation Code is*
35 *amended to read:*

36 60050. (a) (1) *A tax of eighteen cents (\$0.18) is hereby*
37 *imposed upon each gallon of diesel fuel subject to the tax in*
38 *Sections 60051, 60052, and 60058.*

39 (2) *The rate of tax under paragraph (1) shall be increased to*
40 *twenty-three cents (\$0.23) per gallon.*

(3) *The increase in the rate of tax pursuant to paragraph (2), if any, shall not occur unless and until the retail price decreases to less than two dollars (\$2) per gallon based on the retail price for a gallon of regular unleaded gasoline, as reported by the California Energy Commission.*

(b) If the federal fuel tax is reduced below the rate of fifteen cents (\$0.15) per gallon and federal financial allocations to this state for highway and exclusive public mass transit guideway purposes are reduced or eliminated correspondingly, the tax rate imposed by this section, on and after the date of the reduction, shall be ~~increased~~ *recalculated* by an amount so that the combined state and federal tax rate per gallon equals ~~thirty-three cents (\$0.33)~~ *fifteen cents (\$0.15) plus the current rate of tax prior to recalculation.*

(c) If any person or entity is exempt or partially exempt from the federal fuel tax at the time of a reduction, the person or entity shall continue to be exempt under this section.

SEC. 7. *Section 60050.1 of the Revenue and Taxation Code is repealed.*

~~60050.1.—(a) For the privilege of storing, for the purpose of removal, sales, or use, every wholesaler owning undyed diesel fuel on July 1, 1995, shall pay a tax of eighteen cents (\$0.18) for each gallon of undyed diesel fuel according to the volumetric measure thereof, on which a tax has not been imposed under Part 3 (commencing with Section 8601) as in effect on June 30, 1995, and tax would have been imposed on any prior removal, entry, or sale of undyed diesel fuel had Sections 60050 to 60061, inclusive, applied to undyed diesel fuel for the period before July 1, 1995.~~

(b) For purposes of subdivision (a):

(1) ~~“Storing” includes the possession in a storage facility, except an approved terminal or refinery, or a container of any kind, including the fuel tanks of motor vehicles, of undyed diesel fuel and the undyed diesel fuel purchased from and invoiced by the seller prior to July 1, 1995, and in transit on that date.~~

(2) ~~“Owning” means having title to the undyed diesel fuel.~~

(3) ~~“Wholesaler” means any person who sells diesel fuel in this state for resale to a retailer or to a person who is not a retailer and subsequently uses the diesel fuel and was required to be licensed under Part 3 (commencing with Section 8601) as a wholesaler as in effect on June 30, 1995.~~

1 SEC. 8. Section 60050.1 is added to the Revenue and Taxation
2 Code, to read:

3 60050.1. (a) For the privilege of storing for the purpose of
4 sale, each blender, wholesaler, and retailer owning 1,000 gallons
5 or more of tax paid diesel fuel on January 1, 2004, or on January
6 1 of any year thereafter, as applicable, shall pay a storage tax
7 equal to the increase that occurred in the rate of tax pursuant to
8 paragraph (2) of subdivision (a) of Section 60050 on each gallon
9 of tax paid diesel fuel in storage according to the volumetric
10 measure thereof.

11 (b) For purposes of subdivision (a):

12 (1) "Storing" includes the possession in a storage facility,
13 except an approved terminal or refinery, or a container of any kind,
14 including railroad tank cars and truck or trailer cargo tanks, of tax
15 paid diesel fuel as well as the tax paid diesel fuel purchased from
16 and invoiced by the seller prior to January 1 and in transit on that
17 date.

18 (2) "Owning" means having title to the diesel fuel.

19 (3) "Wholesaler" means any person who sells diesel fuel in this
20 state for resale to a retailer or to a person who is not a retailer and
21 subsequently uses the diesel fuel.

22 (4) "Retailer" means any person who sells diesel fuel in this
23 state to a person who subsequently uses the diesel fuel.

24 SEC. 9. Section 60201.1 of the Revenue and Taxation Code is
25 amended to read:

26 60201.1. ~~Each~~ On or before January 31, each person subject
27 to the storage tax imposed under Section 60050.1, ~~on or before~~
28 ~~September 30, 1995,~~ shall prepare and file with the board, on
29 forms prescribed by the board, a return showing the total number
30 of gallons of ~~undyed~~ tax paid diesel fuel owned by the person on
31 ~~July 1, 1995, for which a tax has not been imposed under Part 3~~
32 ~~(commencing with Section 8601) as in effect on June 30, 1995, the~~
33 ~~amount of the tax imposed~~ the immediately preceding January 1,
34 the amount of the storage tax, and any other information that the
35 board deems necessary for the proper administration of this part.

36 The return shall be accompanied by a remittance payable to the
37 board in the amount of tax due.

1 *SEC. 10. This act provides for a tax levy within the meaning*
2 *of Article IV of the Constitution and shall go into immediate effect.*

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